IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2724 OF 2006

Shirur Taluka Sakhar Kamgar Sangh ....Petitioner.
V/s
The Assistant Registrar of Trade Unions & Ors.... ....Respondents.

Mr.C.U.Singh i/by M/s.Sanjay Udeshi & Co. Advocates for the petitioner.

Mr.P.M.Patel, Adv. For respondent No.3.

Mr.V.B.Naik, Adv. For respondent No.4.

CORAM: A.P.DESHPANDE, J.
25/6/07

PC:

The respondent No.3-Union moved an application before the Registrar under section 16 of the Bombay Industrial Relations Act, 1946 (the "Act"). The respondent No.3 claimed in the said application that its membership is larger than the membership of the present petitioner for the relevant period in question and thus prayed for recognizing it as approved and Representative Union in place of the petitioner. The Registrar so also the Appellate Authority viz. the Industrial Court have proceeded to allow the application moved by respondent No.3 after holding that the membership of the respondent No.3-Union was 502 as against the membership of 63 of the present petitioner-union. The main dispute was in

regard to as many as 289 members in regard to whose membership the present petitioner so also respondent No.3 had made a claim. Both the authorities below on appreciation of evidence have held in favour of the present respondent No.3 by concluding that the said disputed claim to 289 members stands substantiated by respondent No.3. For recording the said conclusion the authorities have relied upon counter foil of the membership subscription receipts retained by the Union. Counter foil receipt produced by the respondent No.3 clearly, did bear the signatures of 289 members in token of they having paid the subscription amount whereas no such acknowledgment or signature was there on counter foils produced by the petitioner. The authorities have also found that the amount of membership subscription was not deposited by the petitioner and no entry to that effect finds place in the pass book. There is one more circumstance which has bearing on deciding the membership and the said circumstance is that initially when the process of verification of membership was taken up the petitioner so also the respondent No.3 agreed that the Registrar may conduct interrogation in camera from the members whose membership was disputed and claimed by the petitioner so also by respondent No.3. However when the Registrar fixed time table for verification, the present petitioner backed out from the said process by withdrawing its consent.

Taking over all view of the matter both the authorities below, on the basis of evidence on record have reached a conclusion that the membership of the respondent No.3 for the relevant period being much more than that of the petitioner have registered respondent No.3-Union as approved representative union. In this fact situation the learned counsel for the petitioner has raised a contention that the Registrar has taken into consideration the membership of daily rated employees so also the temporary employees and according to the petitioner only membership of permanently appointed employees alone need to be taking into consideration while entertaining an application under section 16 of the Act. It is submitted that only 356 employees were permanent whereas in the month of December 2003 there were 68 temporary employees and 163 daily wages. The submission is that the Registrar should not have taken in to account the membership of the daily wagers and temporary employees while deciding the membership of respondent No.3-Union. Per contra learned counsel appearing for respondent No.3-union has invited my attention to the definition of “employees” in section 3 sub-section 13 and pointed out that the said definition does not exclude the membership of temporary or daily rated employees. The learned counsel for th respondent has also rightly placed reliance on a judgment of the learned Single Judge

of this Court reported in the case of ***Maharashtra Girni Kamgar Union*** v. ***S.Bhattacharji & Ors.***, 1984 II LLJ 111 and to be more precise to the observations made by the learned Judge in para 13 of the said judgment. The dispute arose for consideration of the learned Single Judge in almost identical set of facts under the said provisions of the Act. In the said case the question that fell for consideration was as to whether badli employees could be treated as employees within the meaning of the Act. The Court concluded by observing thus:

> "The expression "employee" denotes the relationship of master and servant and whether a person is employed in a particular capacity or otherwise would not make any difference. Whether an employee is appointed in a permanent post or merely in a temporary vacancy would have no bearing to determine whether such person has been employed by the employer. The authorities below were perfectly justified in holding that the badli workers must be treated as employees."

2. In this view of the matter there is no substance in the contention raised by the learned counsel for the petitioner. Hence writ petition is summarily dismissed.